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Mr. William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W. -- Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Contact
GEN Docket No. 90-314

Dear Mr. Caton:

Wiley, Rein & Fielding hereby files an original and one copy of a notification of an ex parte contact in GEN Docket No. 90-314. Copies of the attached summary of petitions for reconsideration in GEN Docket No. 90-314 were distributed to a number of members of the Federal Communications Commission.

If any questions should arise concerning this notification, please contact Eric W. DeSilva at (202) 828-3182.

Respectfully submitted,

WILEY, REIN & FIELDING

By:


Eric W. DeSilva

Encl.

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**SUMMARY OF PETITIONS FOR RECONSIDERATION
OF THE SECOND REPORT AND ORDER ON
PERSONAL COMMUNICATIONS SERVICES**

GEN Docket 90-314
ET Docket 92-100

R. Michael Senkowski
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December 13, 1993

FOREWORD

On December 8, 1993, 64 petitions were filed seeking clarification, modification or reconsideration of the FCC's Second Report and Order on new 2 GHz Personal Communications Services ("PCS"). These petitions are summarized herein. The summaries are divided into two sections on licensed 2 GHz PCS (TAB A) and unlicensed 2 GHz PCS systems (TAB B). The comments within each tab are arranged alphabetically by company or organization name.

We have done our best to represent each petitioner's positions accurately on a range of issues within two pages and in a consistent format. Due to space and time constraints, however, many supporting arguments have been truncated and rephrased to conserve space. Accordingly, in all cases, it is highly advisable to review the actual commenter's text. All summaries have page references to the actual commenter's text.

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A

ALCATEL NETWORK SYSTEMS, INC.

Interest: Manufacturer of microwave equipment and participant in TIA interference standards activities (e.g., Bulletin 10-F).

Interference Standards:

- Requests clarification of the interference calculation requirements to state that either the criteria specified in Section 99.233(b) and (c) and Appendix D, or any appropriate industry standard, may be used to calculate interference, provided that generally acceptable good industry practices are followed. (4-6)
- FCC should require use of Bulletin 10-F in place of Appendix D when former is finally adopted to promote certainty and uniformity, expedite PCS deployment, and minimize controversy. (6-7)
- Until Bulletin 10-F is adopted, Appendix D as modified in the TIA petition for reconsideration should be used to calculate interference. (7)

ALLIANCE OF RURAL AREA TELEPHONE AND CELLULAR SERVICE PROVIDERS

Interest: Rural area local exchange carriers and cellular system licensees; prospective PCS applicants.

Service Areas:

- The FCC should allow post-auction partitioning of MTAs and BTAs into separate PCS license areas to promote the expeditious offering of new telecommunications services to the public in metropolitan and rural areas alike. (2-3)
- Two or more companies with interests in distinct portions of an MTA or BTA could form a bidding consortium with a plan to divide the market area or partitioning could occur after the issuance of an initial license. (3-5)

Cellular Eligibility:

- Urges the FCC to revise the cellular ownership attribution standard to one based upon control of a cellular system in the same service area and to increase the population overlap standard to 20 percent. (7-9)

Performance Requirements:

- The FCC should permit the licensee of a partitioned area to construct PCS facilities and retain the license for its own area even if the licensee in another partitioned area of the same MTA or BTA fails to meet construction requirements. (5-7)

AMERICAN PERSONAL COMMUNICATIONS

Interest: Partnership interested in the provision of licensed PCS.

Power Limits:

- Requests that the maximum PCS base station power limit be increased from 100 watts (EIRP) to 1,000 watts (ERP) to reduce the number of necessary base stations, allow the more economical deployment of CDMA and DCS-1900 systems, permit PCS to better compete with cellular, and reduce necessary power levels of subscriber units. Such an increase will not threaten health, interference, or service area limitations. (3-8)

Interference Standards:

- FCC should modify the PCS-OFS coordination distances and power-height limits to conform to the increased base station power limit. (8-10)
- FCC should adopt the proposals of the TIA TR14.11 Committee to correct inconsistencies in Appendix D for PCS-OFS interference criteria. (10-11)

Application Filing Requirements:

- Requests modification of Section 99.53(e) to require location accuracy to the nearest second rather than ± 5 meters because the latter degree of accuracy is unnecessary for determining antenna HAAT. (10)

AMERICAN PETROLEUM INSTITUTE

Interest: Association of over 200 companies involved in the oil and gas industries.

Interference Standards:

- The proposals for spectrum sharing between private operational fixed users and PCS licensees must be modified. (3-9)
 - ▶ Allowing a number of methods for calculating estimated interference from PCS operations to fixed microwave operations will create needless uncertainty and endless disputes. The FCC should instead endorse the interference calculation model to be included within the revised TIA Bulletin TSB10-F (which is based upon industry consensus) as the only acceptable method. (3-6)
- Frequency coordination rules must be adopted for licensed PCS operations. (6-8)
 - ▶ The FCC should require formal coordination by a third party (similar to common carrier microwave licensing) prior to the issuance of any license to a PCS applicant, including the provision that prior notification of the new system's coordination be provided to all potentially affected fixed licensees within the proposed PCS operational area. (7)
 - ▶ Such procedures are necessary due to the serious public safety ramifications of objectionable interference to fixed operations and the inexperience of all parties in operating in a mobile/fixed shared environment. (7)
- The FCC must adopt specific penalties to deter creation of objectionable interference to sensitive fixed microwave operations. (8-9)
 - ▶ Specifically, where the PCS licensee is notified that interference to existing users is occurring, the PCS licensee must immediately cease operation until the interference has been resolved. (8-9)
 - ▶ Moreover, the FCC must adopt clear sanctions to ensure full cooperation by PCS licensees and make available expedited procedures to ensure timely resolution of complaints. (9)

AMERITECH

Interest: Regional Bell Operating Company.

Power Limits:

- Requests an increase in the authorized base station power limits from 100 watts (EIRP) to 1,000 watts to allow PCS to be competitive with cellular. (1-2)

Interference Standards:

- Urges the FCC to adopt the TIA TR14.11 Committee propagation model as soon as practicable to more accurately factor in the effects of urban clutter. (2-3)

AMSC SUBSIDIARY CORPORATION

Interest: Licensee of mobile satellite service system.

Band Plan:

- The FCC should reconsider its allocation at 2180-2200 MHz and make this band available for mobile satellite service. (1-6)

ANCHORAGE TELEPHONE UTILITY

Interest: Wireline local exchange company and cellular service provider.

Cellular Eligibility:

- Requests reconsideration of decision to preclude rural telephone companies that own cellular licenses in their service areas from bidding on PCS blocks of spectrum set-aside for rural telephone companies and other designated entities. (1-4)
- Applying the cellular ownership restrictions to rural telephone company cellular licensees will defeat the Congressional mandate that the FCC provide an opportunity for rural telcos to participate in spectrum-based services. (3-4)

**ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS
OFFICIALS-INTERNATIONAL, INC.**

Interest: Public safety communications organization consisting of members supplying radio communications services for police, fire, forestry-conservation, etc. (1-2)

Band Plan:

- Part of the 2 GHz band should be dedicated for use by public safety organizations. Even though public-safety organizations are exempt from mandatory relocation, by allocating all of the 2 GHz band to PCS, the FCC leaves no room for the implementation of new public safety technologies. Public safety service providers have limited budgets and will not be able to bid on spectrum so they are effectively excluded from the PCS band. (2-5)

BELL ATLANTIC PERSONAL COMMUNICATIONS, INC.

Interest: Regional Bell Operating Company PCS affiliate.

Band Plan:

- The record indicates that there was virtually no support for 10 MHz allocations. (5-6)
- 10 MHz allocations substantially reduce the technical operating efficiency of PCS and might create "orphan" spectrum blocks that cannot be efficiently allocated through auction or after-market consolidations. (7-9)
- Technical and economic efficiency considerations suggest that the Commission should modify its spectrum plan to create six 20 MHz licenses. (10-13)
- Attachment: Maximally Efficient PCS Channel Plans, Dr. Charles L. Jackson and Professor Raymond Pickholtz.

Cellular Eligibility:

- Cellular eligibility restriction is unjustified and hinders the firms best able to provide PCS. (13-17)
- Opposes the Commission's apparent adoption of inconsistent ownership standards for determining when a PCS applicant has an attributable interest in a cellular provider (20 percent threshold) and when a cellular company has an attributable interest in a PCS applicant (5 percent); attribution standard in both cases should be actual legal control or, at a minimum, a 25 percent threshold so that cellular firms, designated entities and LECs can participate in nationwide consortia. (5, 18-22)

Interference Standards:

- Opposes the carrier-to-interference standards of TSB10-E that the FCC has adopted; recommends modifying proposed Section 99.233(b) to provide that "excess margins" should be eliminated. (22)
- FCC should adopt a policy requiring microwave operators to upgrade their systems whenever a PCS operator shows that an upgrade would reduce interference and is willing to pay the cost. (22-23)

BELLSOUTH

Interest: Regional Bell Operating Company.

Band Plan:

- Advocates six 20 MHz frequency blocks licensed for BTAs because uniform initial spectrum blocks would establish parity, encourage competition, and give effect to market forces. (17-20)

Ownership Limits:

- Urges adoption of a uniform spectrum aggregation limit of 45 MHz. (10-14)
- Proposes "attributable spectrum" standard based on formula that considers multiple parties holding interests in cellular and SMR properties, the percentage of the market population covered by the cellular or SMR service, the percentage of ownership interest, the amount of spectrum, and an ownership factor (based on broadcast attribution rules). (15-17)
- Proposes rules to minimize regulation of aftermarket transactions: (1) streamlined assignment and transfer applications; (2) allow partial assignment of licenses (through division of service areas and frequency blocks); (3) initial spectrum limits should not apply to aftermarket transactions. (20-22)

Performance Requirements:

- Consistent with the Commission's objective of allowing market forces to govern the development of PCS, the FCC should eliminate its stringent coverage rules so that the types of services offered are not constrained; at most, the rules should require that licensees build an operational system within 5 years of grant of a license. (7-10)

Other:

- Some of the rules (*e.g.*, coverage requirements, attribution rules, and spectrum allotments) are unsupported in the record, in conflict with the FCC's objectives or inadequately explained and are thus susceptible to judicial challenge under the APA. (23-24)

BLOOSTON, MORDKOFKY, JACKSON & DICKENS

Interest: Law firm representing 2 GHz microwave users.

Interference Standards:

- To prevent interference to Part 21 microwave facilities, the FCC should clarify that §99.233 requires PCS applicants to perform an engineering analysis on the potential interference to both Part 21 and Part 94 OFS microwave stations. (2)

CELLULAR TELECOMMUNICATIONS INDUSTRY ASSOCIATION

Interest: Association representing cellular service providers.

Band Plan:

- The FCC should reconsider its band plan for licensed PCS in favor of four 20 MHz blocks and four 10 MHz blocks. The public interest would be better served by starting small and relying on the private sector to drive larger aggregations through the auction process and aftermarket transactions. (1-11)
- The record supports the sufficiency of 10 MHz allocations. Some 20 MHz blocks should also be allocated to compensate for potential incumbent interference. (3-5)
- 30 MHz blocks are inconsistent with the channelization of the 2 GHz band and thus would make coordination with incumbent users more difficult. They would also encourage inefficient spectrum use. (5-8)
- CTIA's proposal creates a more level playing field for all PCS providers. (11)

Service Areas:

- The FCC should use BTA service areas for all broadband PCS licenses. The record does not support the creation of MTA-based service areas. Even if aggregation of markets does occur, the marketplace should make this determination. (9-11)

Cellular Eligibility:

- The FCC should clarify that a cellular carrier within its market may acquire up to 15 MHz of PCS spectrum (for total of 40 MHz in a market). SMR services should also be subject to this 40 MHz cap. (12)
- Sound principles of antitrust and economic theory dictate against imposing stringent eligibility limits upon cellular carriers; *i.e.*, acquisition of PCS licenses by cellular licensees are unlikely to increase concentration to levels traditionally suspect under the antitrust laws and the current restrictions on cellular eligibility risk creating inefficiencies and decreased innovation in the mobile services marketplace. (11-20 and attached study)
- The FCC should modify its cellular eligibility rules by increasing the permissible 10 percent overlap to 40 percent, increasing the 20 percent cellular attribution rule to 30-35 percent, and adopting a single majority shareholder rule to protect the interests of passive investors. (20-24)

CHICKASAW TELEPHONE COMPANY, ET AL.

Interest: Local exchange carrier with interests in cellular licensees.

Cellular Eligibility:

- The FCC's 20 percent attribution rule needlessly prevents entities with noncontrolling, minority interests in cellular licensees from participating in PCS. (1-4, 9-11)
- The FCC easily can identify noncontrolling, minority interests in the case of a limited partnership arrangement or a single majority shareholder. (4-6)
- Smaller LECs with attributable interests in cellular licensees should not be prevented from participating in PCS; these companies are uniquely positioned to deploy PCS to rural areas, thereby fulfilling their universal service obligation in a cost effective manner. (7-9)
- Recommends, as rational and easily administered, the use of the broadcast attribution rule, which bars only "cognizable" interests (*i.e.*, an interest is not cognizable where a single shareholder holds a majority interest or where a limited partner is not materially involved in management or operations of the partnership). (11-12)

COLUMBIA CELLULAR CORPORATION

Interest: Communications consultant with minority interests in several cellular systems.

Service Areas:

- The FCC should provide for post-auction partitioning of MTAs and BTAs into separately licensed areas for PCS. (1-4)
 - ▶ Partitioning would allow companies who are committed to providing PCS in rural areas to do so. (2-3)
 - ▶ In the cellular marketplace, partitioning has produced desirable results. (3-4)

Cellular Eligibility:

- The ownership attribution standard for cellular licensees should be modified to preclude only entities with controlling interests in an overlapping cellular licensee. (6-8)
 - ▶ Based upon the FCC's own conclusion that cellular carriers are uniquely qualified to help launch PCS in their service areas, the FCC should create a regulatory environment that will permit them to do so. (7)

Performance Requirements:

- The FCC should reconsider the build-out requirements for PCS. (4-6)
- There is no objective standard for ascertaining the reliable service area of a PCS system. Even if one is developed, there will be considerable difficulty in determining the exact number of persons within a licensee's service area. (4)
- A 90 percent build-out requirement forces all carriers to compete head-to-head with existing cellular carriers, rather than develop niche services. The FCC should instead permit the marketplace to develop freely using a "fill-in period" approach. (5)
- If the current build-out requirements are retained, the FCC should permit the licensee of a partitioned area to construct PCS facilities and retain the license for its own area even if the licensee in another partitioned area of the same MTA or BTA fails to meet its construction requirements. (6)

COMSAT CORPORATION

Interest: Provider of mobile satellite service (MSS).

Band Plan:

- Opposes the allocation of 20 MHz of spectrum in the 2180-2200 MHz band to terrestrial PCS; this band was allocated to MSS on a global basis through the ITU and the FCC's allocation decision will thwart the development of MSS. (1-23)
- PCS NPRM did not provide adequate notice of the 2180-2200 spectrum allocation and did not adequately explain the basis for the allocation. (15-22)

CONCORD TELEPHONE COMPANY

Interest: Local telephone company that serves approximately 83,000 access lines in several North Carolina communities. Concord is also a limited partner with Alltel Mobile in two cellular RSAs.

Cellular Eligibility:

- The FCC should modify its cellular eligibility and attribution rule to allow "non-dominant" cellular licensees (licensees that cover less than 1 percent of the nation's POPS), and those that do not have a majority ownership interest and do not manage or operate the cellular license, to be eligible to bid on frequency blocks A, B, C, and D (if the cellular licensee is a designated entity), and E, F, or G. (2)
 - ▶ In support of the above, Concord states that it does not believe that a cellular licensee with 1 percent (and probably as great as 5 percent) or less of the nation's POPS has the ability to exert undue market influence, and that a cellular licensee that does not have majority ownership and neither manages or operates the license does not have the ability to influence decisions by a cellular operator to potentially exploit unfair competitive advantages. (2)
 - ▶ In addition, Concord does not believe the Commission intended to preclude small and mid-size local exchange carriers with a partial interest in a cellular license from substantively participating in the PCS licensing process. Concord is concerned that under the scheme set forth in the *Second Report and Order*, many rural customers will effectively be denied competitive delivery, rapid deployment, and many of the efficiencies that small and mid-size local exchange carriers will bring to the PCS marketplace. (2)

DUNCAN, WEINBERG, MILLER & PEMBROKE, P.C.

Interest: Law firm that represents municipalities, municipal electric utilities, quasi-governmental authorities, rural electric cooperatives, franchising authorities and other governmental authorities with an interest in broadband PCS.

Performance Requirements/Service Areas:

- Concerned with Section 99.13 of the Commission's Rules, which provides that PCS license areas are based on MTAs and BTAs, and Section 99.206, which provides that for broadband PCS, licensees must provide service to one-third of the population within the service area within five years, two-thirds of the population within seven years and 90 percent of the population within ten years, and with that portion of Section 99.206 that states that "failure . . . to meet these requirements will result in the forfeiture of the license and the license will be ineligible to regain it." (1-2)
- States that in those areas where the BTAs are large in area or where the population of the BTA is sparsely scattered across a large geographic area, the use of BTAs as service areas may inhibit service, particularly when combined with the above-mentioned rules. (3)
- Because the rules as adopted may conflict with Congress's mandate that PCS be deployed in rural areas, the FCC should reconsider the licensing scheme for smaller markets and rural areas promptly, because those frequencies may be the first to be auctioned and authorized. (3-4)

ERICSSON CORPORATION

Interest: Equipment manufacturer.

Band Plan:

- The Commission should clarify that the lower portion of the paired allocations should be used for base to mobile communications and the upper portion for mobile to base for frequency division duplex systems. (4)

Interference Standards:

- The Commission should reconsider its decision to refrain from adopting basic interference standards for licensed PCS systems. (4-5)

FLORIDA CELLULAR RSA LIMITED PARTNERSHIP

Interest: Cellular carrier.

Band Plan:

- Requests reconsideration of Section 99.202 to redistribute blocks A-G to achieve parity among the licensees by allocating four 20 MHz blocks and four 10 MHz blocks; as currently drawn, the band plan favors large players, creates an imbalanced playing field, and fails to put designated entities on an equal footing. (2-5)

Cellular Eligibility:

- Questions how cellular carriers will be able to aggregate up to 40 MHz when they are only allowed one 10 MHz block in their markets. (5)
- Asserts the 10 percent overlap of cellular service area and PCS service area is too narrow and should be raised to 20 percent. (5)

Other:

- Small businesses should be defined as those businesses with capitalization of at most \$100 million and no more than 300 employees. (5-6)